

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CYNTHIA GUTIERREZ-HERRERA,

Defendant.

CR 24–11–M–DLC

ORDER

Before the Court is United States Magistrate Judge Kathleen L. DeSoto’s Findings & Recommendation Concerning Plea. (Doc. 31.) Because neither party objected, they are not entitled to *de novo* review. 28 U.S.C. § 636(b)(1); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). Therefore, the Court reviews the Findings and Recommendation for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a “definite and firm conviction that a mistake has been committed.” *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000).

Defendant Cynthia Gutierrez-Herrera is charged with one count of conspiracy to distribute and to possess with intent to distribute fentanyl, in violation of 21 U.S.C. § 846 (Count 1), and one count of possession with intent to distribute fentanyl, in violation of 21 U.S.C. § 841(a)(1) and 18 U.S.C. § 2 (Count

3), as set forth in the Indictment. (Doc. 1.) Judge DeSoto recommends that this Court accept Gutierrez-Herrera's guilty plea as to Count 1 after Gutierrez-Herrera appeared before her pursuant to Federal Rule of Criminal Procedure 11. The Court finds no clear error in Judge DeSoto's Findings and Recommendation and adopts them in full, including the recommendation to defer acceptance of the Plea Agreement until sentencing when the Court will have reviewed the Plea Agreement and Presentence Investigation Report.

Accordingly, IT IS ORDERED that Judge DeSoto's Findings and Recommendation (Doc. 31) is ADOPTED in full.

IT IS FURTHER ORDERED that Gutierrez-Herrera's motion to change plea (Doc. 23) is GRANTED.

IT IS FURTHER ORDERED that Gutierrez-Herrera is adjudged guilty as charged in Count 3 of the Indictment.

DATED this 20th day of June, 2024.



Dana L. Christensen, District Judge
United States District Court